



**GE Transportation
Systems**

Michael J. Baughman
Counsel

General Electric Company
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August 12, 1992

**VIA FEDERAL
EXPRESS**

2-231A047

17922

RECORDATION NO. **17922** FILED 1992

Ms. Mildred Lee
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Room 2302
Washington, D.C. 20423

AUG 18 1992 -3 15 PM

INTERSTATE COMMERCE COMMISSION

AUG 18 3 09 PM '92
NOTICE OPERATING UNIT

Subject: Recordation of Locomotive Lease

Dear Ms. Lee:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303(a) and the regulations thereunder, are duplicate originals of an Interim User Agreement, dated as of June 25, 1992, between General Electric Company ("Lessor") and The Atchison, Topeka and Santa Fe Railway Company ("Lessee"), a primary document. The rent called for under this Lease has been redacted.

The names and addresses of the parties to the enclosed Locomotive Lease Agreement are as follows:

LESSOR: General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

LESSEE: The Atchison, Topeka and Santa
Fe Railway Company
1700 East Golf Road
Shaumburg, Illinois 60173

A general description of the railroad locomotives covered by the enclosed documents is attached hereto as Schedule I. Also enclosed is a remittance in the amount of \$16.00 for the required recording fee.

The undersigned is Counsel and Attesting Secretary of General Electric Company. Please return one original of the enclosed document, stamped to evidence filing with the Commission, to Michael J. Baughman, General Electric Company, 2901 East Lake Road, Building 14-5, Erie, Pennsylvania 16531.

A short summary of the document to appear in the index follows:

PRIMARY DOCUMENT

Interim User Agreement, dated as of May 25, 1992, between General Electric Company ("Lessor") and The Atchison, Topeka and Santa Fe Railway Company ("Lessee"), relating to 40 General Electric Diesel Electric Locomotives, bearing identification marks "ATSF" and bearing road numbers 801-851 (inclusive, odd numbers only) and 853-866 (inclusive).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "M J Baughman", followed by a horizontal line.

Enclosures

SCHEDULE I

Description of Locomotives

<u>Type of Equipment</u>	<u>Number</u>	<u>Identifying Marks</u>	<u>Road Numbers</u>
General Electric Diesel Electric Locomotives	Forty	Marked "ATSF" on both sides of locomotives	*see below

*Road Numbers 801-851 (inclusive, odd numbers only) and 853-866 (inclusive)

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INTERSTATE COMMERCE COMMISSION

FIRST AMENDMENT TO AND RESTATEMENT OF INTERIM USER AGREEMENT

By and between

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

AND

GENERAL ELECTRIC COMPANY

Effective as of June 25, 1992

THIS FIRST AMENDMENT AND RESTATEMENT, dated as of June 25, 1992, between **GENERAL ELECTRIC COMPANY**, a New York corporation ("GE") and **THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY**, a Delaware corporation ("ATSF").

WITNESSETH:

WHEREAS, GE and ATSF entered into an agreement dated as of February 28, 1992 (the "Purchase Agreement") calling for GE to manufacture and deliver to ATSF, and ATSF to accept and pay for, 23 Dash 8-40B locomotives to bear road numbers 560-582, inclusive, and 67 Dash 8-40CW locomotives to bear road numbers 800-866, inclusive (collectively, the "Locomotives"); and

WHEREAS, GE and ATSF entered into an Interim User Agreement dated as of February 27, 1992 (the "IUA") under which ATSF was permitted to use the Locomotives prior to the time ATSF established permanent financing with which to pay the purchase price for the Locomotives; and

WHEREAS, on June 25, 1992 ATSF consummated such permanent financing by assigning to Ameritrust Company National Association its right to purchase the Locomotives and entering into an Equipment Lease Agreement covering 50 of the Locomotives bearing road numbers 560-582 (inclusive) and 800-852 (inclusive, even numbers only) (collectively, the "Financed Locomotives"); and

WHEREAS, on June 25, 1992 GE terminated the IUA with respect to the Financed Locomotives; and

WHEREAS, GE and ATSF desire to document continuation of the IUA with respect to the remaining Locomotives bearing road numbers 801-851 (inclusive, odd numbers only) and 853-866 (inclusive) (the "Leased Locomotives") so that ATSF may use the Leased Locomotives from the time of delivery thereof until ATSF has consummated the permanent financing (the "Financing") with respect thereto;

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. GE, as lessor, hereby agrees to deliver the Leased Locomotives to ATSF, as lessee, FOB GE's Erie, Pennsylvania plant, as of the date each of them is released from manufacturing, for acceptance by ATSF in Streator, Illinois, for a period ending on November 30, 1992 (the "Termination Date"), time being of the essence. ATSF represents to GE its present belief that the Financing will be established, and the purchase price due for such Leased Locomotives paid, not later than November 30, 1992, time being of the essence, and ATSF covenants to use its best efforts to assure that the Financing is established, and the purchase price for the Leased Locomotives paid, by the Termination Date. If, despite such best efforts, the Financing is not established by November 30, 1992, then the Termination Date shall be extended for a period ending not later than December 29, 1992, time being of the essence. On the date the purchase price of the Leased Locomotives is paid to GE, the party providing the Financing may, if it so elects, assume the obligations of GE hereunder. Upon payment to GE of the purchase price and assumption of the obligations of GE by the party providing Financing, this Agreement shall automatically terminate with respect to GE without further action by or notice to either party hereto, except for those provisions which, in order to be given effect, should survive termination.

2. Upon receipt of each Leased Locomotive in Streator, Illinois, ATSF's representative shall execute a Certificate of Acceptance, in the form of Exhibit A hereto, acknowledging the receipt of delivery of each such Leased Locomotive under this Agreement. During the term hereof for so long as the purchase price shall not have been paid, title to the Leased Locomotives shall remain in GE with ATSF's rights and interests therein being solely that of possession, custody and use as bailee hereunder. Transfer of title shall be effected only at the time of GE's delivery of bills of sale to the party which has paid the purchase price therefor.

3. On or before the Termination Date, ATSF agrees to pay to GE, as rent for the Leased Locomotives:

(a) With respect to the 14 Leased Locomotives bearing road numbers 854, 856, 858, 860, 862, 864, 866, 801, 803, 805, 807, 809, 811 and 813, a sum equal to

; and

(b) With respect to the other Leased Locomotives, a sum equal to

in both cases for each day that payment of the purchase price is not received from and after the thirtieth day after the Average Delivery Date (as defined in the Purchase Agreement) of the Leased Locomotives FOB Erie, Pennsylvania.

4. ATSF shall permit no liens or encumbrances (other than the usual interchange of traffic rules) of any kind to attach to the Leased Locomotives, and it agrees to:

(a) Indemnify and save GE harmless from any and all claims, expenses or liabilities of whatsoever kind, including but not limited to attorneys' fees and costs, which may arise by, through or under ATSF during the time any of the Leased Locomotives are in the possession of ATSF; and

(b) Pay any and all taxes (excluding any tax measured by GE's net income and any franchise, capital, net worth or similar tax imposed on GE, or any tax imposed in lieu of any of the foregoing), fines, charges and penalties that may accrue or be assessed or imposed upon the Leased Locomotives or GE, because of GE's ownership or because of the use, operation, management or handling of the Leased Locomotives during the term of this Agreement. The obligations of ATSF described in this Section 4 shall survive termination of this Agreement.

5. ATSF shall cause the Leased Locomotives to be covered by a Maintenance Agreement between GE and ATSF as contemplated in the Purchase Agreement and shall, at its option, repair or promptly pay to GE the purchase price (as set forth in the Purchase Agreement) for any of the Leased Locomotives which may be damaged or destroyed by any cause during the term of this Agreement.

6. ATSF acknowledges that it takes its possessory interest in the Leased Locomotives subject to those provisions of the Purchase Agreement relating to Warranty, exclusion of certain warranties, remedies (and limitations of remedies) and limitation of liability and indemnities.

7. Prior to delivery under this Agreement, each Leased Locomotive shall be numbered with a road number, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each

such Leased Locomotive, the following legend in letters not less than one inch in height:

**OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION.**

ATSF hereby agrees to indemnify GE against any liability, loss or expense incurred by it as a result of placing of the aforementioned markings on the Leased Locomotives. If during the term of this Agreement such markings shall at any time be removed, defaced or destroyed, ATSF shall promptly cause the same to be restored or replaced.

8. In the event ATSF shall, in violation of its obligations under the Purchase Agreement, fail to accept and pay (or cause payment to be made) for the Leased Locomotives, or such payment is not made prior to November 30, 1992 (or December 29, 1992 if the Termination Date is extended in accordance with the provisions of Section 1 hereof), GE may, in addition to any other remedies it may have, enter upon the premises of ATSF or such other premises where the Leased Locomotives may be and take possession of all or any Leased Locomotives, and thenceforth hold, possess and enjoy the same free from any right of ATSF, or its successors or assigns. In such event, GE may use the Leased Locomotives for any purposes whatsoever, and may sell and deliver the Leased Locomotives to others upon such terms as GE may see fit in its sole discretion, it being understood and agreed that ATSF shall remain liable to GE under the Purchase Agreement for: (a) an amount equal to any difference in the price paid by such other parties and the purchase price due from ATSF under the Purchase Agreement (less the value of GE's use of the Leased Locomotives), plus (b) an amount equal to all expenses of GE incident to such sale including, but not limited to, the expenses of withdrawing the Leased Locomotives from the service of ATSF, providing for the care and custody of the Leased Locomotives, preparing the Leased Locomotives for sale, and selling the Leased Locomotives. ATSF shall pay the foregoing amounts from time to time upon demand by GE.

9. ATSF and GE each represent and warrant to the other that:

(a) It is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation, is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Agreement, and has power and authority to own its properties and carry on its business as now conducted;

(b) The execution and delivery of this Agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument binding upon it, and this Agreement is a valid and binding obligation of it enforceable against it in accordance with its terms, subject to applicable insolvency, bankruptcy or moratorium laws and general equitable principles;

(c) The rights of GE as herein set forth and the title of GE to the Leased Locomotives are senior to the lien of any mortgage, security agreement or other instrument to which the party making the representation or warranty is a party; and

(d) No governmental authorizations, approvals or exemptions are required of it for the execution and delivery of this Agreement or for the validity and enforceability hereof against it or the bailment of the Leased Locomotives hereunder on the terms and conditions provided herein, or, if any such authorizations are required of it, they have been obtained; and if any such shall hereafter be required of it, they will promptly be obtained.

10. ATSF agrees that the execution by GE of this Agreement or the delivery by GE of the Leased Locomotives as contemplated by this Agreement, shall not relieve ATSF of its obligations to accept, take and pay for the Leased Locomotives in accordance with the terms of the Purchase Agreement.

11. The execution of a Certificate of Acceptance in the form of Exhibit A hereto pertaining to any such Leased Locomotive shall constitute acceptance of such Leased Locomotive hereunder, and any warranty or other time period set forth in the Purchase Agreement applicable to such Leased Locomotive shall be deemed to commence from the date of GE's release of the Leased Locomotives from manufacturing in Erie, Pennsylvania.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, each party hereto has caused this First Amendment to and Restatement of Interim User Agreement to be executed

by its authorized representative in Schaumburg, Illinois as of the 25th day of June, 1992.

Attest:

[CORPORATE SEAL]

J. T. Williams
Assistant Secretary

THE ATCHISON, TOPEKA
AND SANTA FE RAILWAY
COMPANY

By: [Signature]
Title Vice Pres. - Admin.

Attest:

[CORPORATE SEAL]

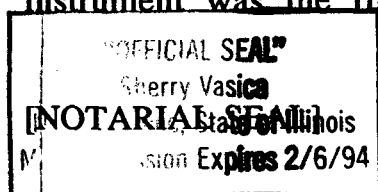
M. J. Baughman
M. J. Baughman Attesting Secretary

GENERAL ELECTRIC COMPANY

By: J. R. Malone
J. R. Malone, Manager, North
American Locomotive Marketing &
Sales

State of Illinois)
County of Cook) ss:

On this 13th day of August, 1992, before me personally appeared CARL R. ICE, to me personally known, who, being by me duly sworn, says that he is Vice Pres. - Admin., of The Atchison, Topeka and Santa Fe Railway Company, that the foregoing instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Sherry Vasica
Notary Public

My Commission expires: February 6, 1994

State of Pennsylvania)
County of Erie) ss:

On 7th day of August, 1992, before me personally appeared J. R. Malone, to me personally known, who, being by me duly sworn, says that he is Manager, North American Locomotive Marketing & Sales of GENERAL ELECTRIC COMPANY, that the foregoing instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Carol A. Wahlen
Notary Public

My Commission expires:

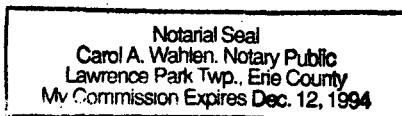


EXHIBIT A

Certificate of Acceptance

This is to certify that the following equipment covered by that certain Purchase Agreement dated as of February 28, 1992 has been accepted in Streator, Illinois by The Atchison, Topeka and Santa Fe Railway Company ("ATSF") under the First Amendment to and Restatement of Interim User Agreement dated as of June 25, 1992 between General Electric Company and ATSF this _____ day of _____, 1992.

Description of Equipment

Number of Units

Description

Road Numbers

Model Dash 8-40CW

**THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY**

By: _____

Title _____